

1979 S.C. Op. Atty. Gen. 131 (S.C.A.G.), 1979 S.C. Op. Atty. Gen. No. 79-95, 1979 WL 29100

Office of the Attorney General

State of South Carolina

Opinion No. 79-95

July 18, 1979

***1 SUBJECT: Property Tax—Excess Funds**

1. The surplus remaining after payment of the hospital bond issue may be appropriated by the governing body for other county purposes.
2. The excess in the sinking fund should be used to pay the bond debt as it matures, thereby reducing the tax levy for such purposes.

TO: Gerald C. Smoak, Esq.
Colleton County Attorney

QUESTIONS:

1. A bond issue of Colleton County for its hospital has been or will shortly be paid in full and there remains from taxes levied for payment of such bonds a surplus. What disposition is to be made of this surplus?
2. Taxes are being collected for payment of another bond issue, however, there exists in the 'sinking fund' from such taxes an amount that is sufficient to pay maturing bonds and interest for the next year or two. Is a tax levy necessary to pay for the maturing bonds and interest in such years or are the funds in the 'sinking fund' to be used for such purpose?

DISCUSSION:

Question 1. The general rule as to the disposition of surplus funds is stated in 63 Am. Jur. 2d, Public Funds, as follows: '* * *. When a special fund is raised for a particular purpose under legislative authority by a special tax or bond issue or the like, or money is appropriated for a specified purpose, it cannot be used for any other purpose, either permanently or temporarily, until the purpose for which it was intended has been fully accomplished. * * *.' § 4. Diversion of funds.

'Generally, where a surplus remains after the accomplishment of the purpose for which an appropriation was made, it may be diverted to other causes. * * *.' § 56. Disposal of surplus funds.

Such is the law of this State.

'As we hold here, it is generally the law elsewhere that where a surplus remains after payment of appropriation, it may be appropriated to other purposes.' Cox v. Bates, 237 S. C. 198, 116 S. E. 2d 828; Parker v. Bates, 216 S.C. 52, 56 S. E. 2d 723.

To dispose of the money before the bonds are paid, however, is proscribed. State ex rel Edwards v. Osborne, 193 S. C. 158, 7 S. E. 2d 526, 195 S. C. 295, 11 S. E. 2d 260.

It is the opinion of this office that the surplus remaining after payment of the hospital bond issue may be appropriated by the governing body for other county purposes.

Question 2. A sinking fund is defined as:

'* * * a fund arising from particular taxes, imports or duties, which is appropriated toward payment of the interest due on a public loan, and for payment of the principal.' [Talbot v. City of Lyons](#), 171 Neb. 186, 105 N. W. 2d 918. See also [39 Words and Phrases](#), Sinking Fund, and [Black's Law Dictionary](#), 4th Edition.

While we do not have before us the language providing for the tax levy and the creation of the sinking fund, we treat the question under the assumption that the auditor is to levy and the treasurer is to collect an annual tax sufficient to pay the bonds as they mature, to pay accruing interest and to provide a sinking fund.

*2 In this case the sinking fund is sufficient to satisfy the bond debt that is payable before taxes are collectible in 1980. The sinking fund should be used for that purpose and the next tax levy made when the amount in the fund would be insufficient to make similar payments. In the case of [Southern Ry. Co. v. Board of Com'rs.](#), 148 N. C. 220, 61 S.E. 690, the Court was concerned with an excessive levy for bond debt retirement and held:

'* * * the plaintiff * * * is entitled to an order enjoining the appropriation of any part of the excess on the interest on the bonds to any other purpose. It may be held to meet the interest accruing for the coming year, or for a sinking fund * * *. No more should be taken * * * by way of taxation, than is reasonably necessary * * *.'

It is the opinion of this office that the excess in the sinking fund should be used to pay the bond debt as it matures, thereby reducing the tax levy for such purposes.

Joe L. Allen, Jr.
Deputy Attorney General

1979 S.C. Op. Atty. Gen. 131 (S.C.A.G.), 1979 S.C. Op. Atty. Gen. No. 79-95, 1979 WL 29100